

READ & STEVENS, INC.

IBLA 85-617

Decided July 10, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's high bid for competitive oil and gas lease NM 55066.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:  
Discretion to Lease

The Secretary has discretionary authority to reject a high bid for a tract offered at a competitive sale of oil and gas leases if he has reason to believe the bid price is less than the fair market value. If BLM supports the rejection with sufficient evidence to demonstrate a rational basis for its decision, an appellant must show BLM has erred when formulating the fair market value. An appellant also has an affirmative obligation to establish that the bid it submitted is a reasonable reflection of the fair market value.

APPEARANCES: Joe Wigley, Land Manager, Read & Stevens, Inc., Roswell, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Read & Stevens, Inc. (Read & Stevens), appeals from the April 16, 1985, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected for the second time its high bid for oil and gas lease NM 55066 (parcel 37). Appellant had submitted a bid of \$2,800 (\$35 per acre).

By a decision dated December 22, 1982, BLM rejected appellant's high bid for parcel 37, a decision which Read & Stevens appealed to the Board. BLM's December 22, 1982, decision was based upon a memorandum dated November 17, 1982, in which the BLM Deputy Minerals Manager for Resource Evaluation reported to the Chief, Oil and Gas Section, BLM, Santa Fe, New Mexico, that high bids for several parcels, including parcel 37, were considered to be lower than the BLM presale estimates of value, and recommended rejection of the bid for the various parcels.

On appeal in Read & Stevens, Inc., 75 IBLA 121 (1983), this Board set aside and remanded the December 22, 1982, BLM decision for further consideration. The Board's decision further stated: "If the bid is rejected again, BLM shall set forth its reasons for doing so, including the presale evaluation." Read & Stevens, Inc., *supra* at 124.

BLM's April 15, 1985, decision rejecting appellant's high bid for parcel 37 for a second time was based upon the recommendation of BLM's Southwest Region Evaluation Team (SRET). The decision was accompanied by an April 15, 1985, memorandum prepared by SRET which stated, in part:

The SRET has reviewed the original evaluation, and the Read and Stevens argument has been considered. No new data of a substantive nature was provided by Read and Stevens. The original analysis is felt to be the best indication of the value of the subject for bonus as the date of the sale.

Therefore, we must again recommend that the Read and Stevens bid be rejected because it is substantially beneath the BLM presale estimate, and their argument lacks data to allow us to accept their bid.

The memorandum set forth BLM's presale evaluation of \$300 per acre for parcel 37, and included by reference an attached March 2, 1983, memorandum to the Field Solicitor, Santa Fe, setting forth parameters used when formulating the fair market value, the basis for the original rejection, and an analysis of appellant's statement of reasons filed in the first appeal. 1/

In its statement of reasons on appeal appellant contends that the tract was purchased as wildcat acreage to be added to its leasehold inventory. Appellant argues that it could not justify a higher lease cost because of the "poor quality of Morrow production in the area, the high cost of drilling, and the fact that additional risk is involved in whether a full proration unit for a Morrow well can ever be put together." However, appellant does not point to any factor used in the original fair market value analysis it considers to be in error or suggest any value or values it considers to reflect actual conditions. Rather, the statement of reasons is merely couched in the form of broad allegations.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1982), *see, e.g.*, Suzanne Walsh, 94 IBLA 249 (1986); Read & Stevens, Inc., 93 IBLA 61 (1986); Michael Shearn, 87 IBLA 168, 169 (1985); Viking Resources Corp., 80 IBLA 245 (1984). This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent fair market value for

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1/ This document was to counsel and thus properly excluded from the case file. However, the data, which was available at the time of the first appeal could have been furnished to the appellant and Board, thus avoiding a second appeal.

the parcel. E.g., Clarence Sherman, 82 IBLA 64, 65 (1984); Viking Resources Corp., *supra* at 246; Glen M. Hedge, 73 IBLA 377, 378-79 (1983). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Viking Resources Corp., *supra* at 246; Glen M. Hedge, *supra* at 379; Coquina Oil Corp., 29 IBLA 310, 311 (1977).

The Department is entitled to rely on the reasoned analysis by its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Don Nelson, 85 IBLA 156 (1985); L. B. Blake, 67 IBLA 103 (1982). If the record indicated a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, that decision will not be reversed, even though the determination may be subject to reasonable differences of opinion. See Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981).

The Board has repeatedly stressed the need for BLM to document the reasons for its determination in the record. In the instant appeal, the record was initially found to be insufficient for the Board to determine the correctness of the BLM decision or the merits of appellant's arguments. The Board stated that the record did not then reveal the presale evaluation for parcel 37 or sufficient data to support rejection of appellant's bid, and, therefore, set aside BLM's initial rejection, and remanded the case to BLM for further consideration. Read & Stevens, Inc., 75 IBLA at 124.

When rejecting the high bid submitted by appellant for the second time, BLM supplemented the record with memoranda setting forth the data used in determining the fair market value and the reasons for rejecting appellant's bid, including the critical presale evaluation figure for the parcel. The BLM decision was based on the proximity of producing wells, comparative lease sales, and its presale evaluation of the value of the parcel. The Board has determined that a decision rejecting a high bid will not be overturned unless the high bidder shows BLM's minimum acceptable bid value was erroneous and affirmatively shows its bid represents fair market value for the parcel. Burton/Hawks, Inc., 98 IBLA 118 (1987). Thus, when BLM provides a rational basis for its rejection decision an appellant has an affirmative obligation to show that BLM has in some way erred in its evaluation in a manner which would result in the fair market value being lower than that set by BLM in either its presale or postsale valuation of the tract. Appellant has an affirmative obligation to demonstrate that the Government estimate was inaccurate. The Westlands Co., 83 IBLA 43 (1984). Moreover, an appellant has a similar obligation to show that the high bid submitted represented fair market value. The Secretary or his delegate need not prove the rejected bid was inadequate in order to support a rejection decision. Rejection is an exercise of the Secretary's discretion, and deference is given to such action if, in the public interest, the Secretary determines a bid to be for less than the Department's estimate of fair market value.

The record need only be sufficient to establish that the decision was not arbitrary, capricious, or in error. Read & Stevens, Inc., 93 IBLA 84 (1986); Harvey E. Yates, 71 IBLA 134 (1983); Kerr McGee Corp., 6 IBLA 108 (1972), aff'd, Kerr McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975). Appellant has responded with general statements regarding the speculative nature of drilling prospects and the reduction of fair market value amounts as a result of depressed gas prices. Even assuming appellant could show the relevance of present prices to fair market value in 1982, without supporting evidence these allegations can best be described as a mere difference of opinion.

Accordingly, we find the record supports the rejection of appellant's bid. Appellant has made no showing that the decision was arbitrary, capricious, or based upon inaccurate data. The arguments presented by appellant on appeal are insufficient to overcome the weight which we properly accord to the BLM findings.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

James L. Burski  
Administrative Judge

